

Assembly Bill No. 1343

Passed the Assembly August 31, 2010

Chief Clerk of the Assembly

Passed the Senate August 31, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 5 (commencing with Section 48700) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1343, Huffman. Solid waste: architectural paint: recovery program.

Existing law prohibits the disposal of latex paint in the land or waters of the state and authorizes certain persons to accept latex paint for recycling.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would create an architectural paint recovery program that would be enforced by the department. On or before April 1, 2012, a manufacturer or designated stewardship organization would be required to submit to the department an architectural paint stewardship plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal. The plan would be required to contain specified elements of an architectural paint stewardship program, including, but not limited to, an architectural paint stewardship assessment, approved by the department, on each container of architectural paint sold in this state. The bill would require the plan to be reviewed and approved by the department within 90 days of receipt.

This bill would require, on or before July 1, 2012, or 3 months after a plan is approved by the department, the manufacturer or stewardship organization to implement the architectural paint stewardship program described in the approved plan.

The bill would also prohibit a manufacturer or retailer from selling or offering for sale architectural paint to any person in this state, unless the manufacturer is listed on the department's Internet Web site as being in compliance with the bill's requirements. The prohibition would be in effect on the 120th day after a notice listing the manufacturers that are in compliance is posted on the department's Internet Web site and would remain in effect with regard to a noncompliant manufacturer until that manufacturer is listed on the department's Internet Web site or can otherwise demonstrate compliance, as prescribed.

This bill would authorize the department to administratively impose civil penalties for violations of the act.

The bill would also require a stewardship organization to pay the department annual administrative fees in the amount that is sufficient to cover the department's full costs of administering and enforcing the program.

The bill would establish the Paint Recovery Account in the Integrated Waste Management Fund, would require the fees to be deposited in this account, and would require the department to expend those fees, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions. The bill would also establish the Paint Recovery Penalty Subaccount in the Integrated Waste Management Fund, would require the penalties collected to be deposited in that subaccount, and would authorize the department to expend those funds, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would require manufacturers to submit a report to the department by July 1, 2013, and each year thereafter, describing their paint recovery efforts.

The bill would provide that certain actions taken pursuant to the program established by the bill do not violate the Cartwright Act or the Unfair Practices Act.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Architectural paint is a priority waste type based on its high volume, subsequent cost to manage, and high potential for increased recovery, reuse, and recycling.

(b) The Department of Toxic Substances Control has deemed latex paint as presumed hazardous in California and oil-based paint is characteristically hazardous, making both latex and oil-based paints prohibited from disposal in California.

(c) The former California Integrated Waste Management Board estimated that architectural paint, both latex and oil-based, comprises the largest volume of waste product collected at publicly operated household hazardous waste facilities, 35 percent of total household hazardous waste collected in California in the 2007–08 fiscal year.

(d) The Department of Toxic Substances Control estimates that the cost to manage waste architectural paint in California is the single largest cost to local governments in the household hazardous waste system.

(e) The former board estimated that for the 2007–08 fiscal year only 5 percent of California households utilized a household hazardous waste program.

(f) Architectural paint is convenient to buy and inconvenient to recycle or legally dispose of in California.

(g) There has been an ongoing debate on how to better manage leftover architectural paint since 1989 when the board heard an item on options to fund a collection and management system.

(h) A national dialogue has been ongoing since 2002, yet has not resulted in any architectural paint collection or financial relief to California local governments.

(i) California has the largest number of latex paint recyclers in the country: Amazon Environmental (Riverside), Kelly-Moore (Sacramento), and Visions (Sacramento).

(j) State procurement of recycled paint is required. The state agency “buy recycled” mandates are not being met, and there is no enforcement mechanism, resulting in only 2 percent compliance reporting to the board.

SEC. 2. Chapter 5 (commencing with Section 48700) is added to Part 7 of Division 30 of the Public Resources Code, to read:

CHAPTER 5. ARCHITECTURAL PAINT RECOVERY PROGRAM

48700. The purpose of the architectural paint recovery program established pursuant to this chapter is to require paint manufacturers to develop and implement a program to collect, transport, and process postconsumer paint to reduce the costs and environmental impacts of the disposal of postconsumer paint in this state.

48701. For purposes of this chapter, the following terms have the following meanings:

(a) “Architectural paint” means interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include aerosol spray paint or architectural coatings purchased for industrial or original equipment manufacturer use.

(b) “Consumer” means a purchaser or owner of architectural paint, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(c) “Department” means the Department of Resources Recycling and Recovery.

(d) “Distributor” means a person that has a contractual relationship with one or more manufacturers to market and sell architectural paint to retailers.

(e) “Manufacturer” means a manufacturer of architectural paint.

(f) “Postconsumer paint” means architectural paint not used by the purchaser.

(g) “Retailer” means a person that sells architectural paint in the state to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means.

(h) “Stewardship organization” means a nonprofit organization created by the manufacturers to implement the architectural paint stewardship program described in Section 48703.

48702. (a) A manufacturer of architectural paint sold in this state shall, individually or through a stewardship organization, submit an architectural paint stewardship plan to the department to develop and implement a recovery program to reduce the generation of postconsumer architectural paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound

fashion, including collection, transportation, processing, and disposal.

(b) (1) A manufacturer or retailer shall not sell or offer for sale in this state architectural paint to any person in this state unless the manufacturer is in compliance with this chapter.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) is posted on the department's Internet Web site, and shall apply to any manufacturer that is not listed on the department's Internet Web site, and shall remain in effect until the manufacturer is listed on the department's Internet Web site or can demonstrate compliance as described in paragraph (2) of subdivision (c).

(c) (1) On July 1, 2012, or upon the date the first plan is approved, whichever date is earlier, the department shall post on its Internet Web site a list of manufacturers for which the department has approved a plan pursuant to subdivision (a) of Section 48704. The department shall update this posting no less than once every six months thereafter. On and after April 1, 2013, the department shall post a notice on its Internet Web site listing manufacturers that are in compliance with this chapter pursuant to subdivision (b) of Section 48705 and shall update this posting no less than once every six months.

(2) A manufacturer that is not listed on the department's Internet Web site pursuant to this section, but demonstrates to the satisfaction of the department that it is in compliance with this chapter before the next notice is required to be posted pursuant to this section, may request a certification letter from the department stating that the manufacturer is in compliance. The manufacturer who receives that letter shall be deemed to be in compliance with this chapter.

(d) A wholesaler or a retailer that distributes or sells architectural paint shall monitor the department's Internet Web site to determine if the sale of a manufacturer's architectural paint is in compliance with this chapter.

48703. (a) On or before April 1, 2012, a manufacturer or designated stewardship organization shall submit an architectural paint stewardship plan to the department.

(b) (1) The plan shall demonstrate sufficient funding for the architectural paint stewardship program as described in the plan, including a funding mechanism for securing and dispersing funds

to cover administrative, operational, and capital costs, including the assessment of charges on architectural paint sold by manufacturers in this state.

(2) The funding mechanism shall provide for an architectural paint stewardship assessment for each container of architectural paint sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.

(3) The architectural paint stewardship assessment shall be added to the cost of all architectural paint sold to California retailers and distributors, and each California retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in the state.

(4) The architectural paint stewardship assessment shall be approved by the department as part of the plan, and shall be sufficient to recover, but not exceed, the cost of the architectural paint stewardship program. The plan shall require that any surplus funds be put back into the program to reduce the costs of the program, including the assessment amount.

(c) The plan shall address the coordination of the architectural paint stewardship program with existing local household hazardous waste collection programs as much as this is reasonably feasible and is mutually agreeable between those programs.

(d) The plan shall include goals established by the manufacturer or stewardship organization to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, including recovery and recycling of postconsumer paint, as practical, based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(e) The plan shall include consumer, contractor, and retailer education and outreach efforts to promote the source reduction and recycling of architectural paint. This information may include, but is not limited to, developing, and updating as necessary, educational and other outreach materials aimed at retailers of architectural paint. These materials shall be made available to the retailers. These materials may include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer.

(2) Written materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery, or both. Written materials shall include information on the prohibition of improper disposal of architectural paint.

(3) Advertising or other promotional materials, or both, that include references to architectural paint recycling opportunities.

(f) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program.

48704. (a) The department shall review the plan within 90 days of receipt, and make a determination whether or not to approve the plan. The department shall approve the plan if it provides for the establishment of a paint stewardship program that meets the requirements of Section 48703.

(b) (1) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or the stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(2) Notwithstanding paragraph (1), the department may release a summary form of financial, production, or sales data if it does not disclose financial, production, or sales data of a manufacturer or stewardship organization.

(c) On or before July 1, 2012, or three months after a plan is approved pursuant to subdivision (a), whichever date is later, the manufacturer or stewardship organization shall implement the architectural paint stewardship program described in the approved plan.

(d) The department shall enforce this chapter.

(e) (1) The stewardship organization shall pay the department an annual administrative fee pursuant to paragraph (2).

(2) The department shall impose fees in an amount that is sufficient to cover the department's full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to the submittal of the stewardship plans. Fee revenues collected under this section shall only be used to administer and enforce this chapter.

(f) (1) A civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount of up to one thousand dollars (\$1,000) per violation per day.

(2) A person who intentionally, knowingly, or negligently violates this chapter may be assessed a civil penalty by the department of up to ten thousand dollars (\$10,000) per violation per day.

48705. (a) On or before July 1, 2013, and each year thereafter, a manufacturer of architectural paint sold in this state shall, individually or through a representative stewardship organization, submit a report to the department describing its architectural paint recovery efforts. At a minimum, the report shall include all of the following:

(1) The total volume of architectural paint sold in this state during the preceding calendar year.

(2) The total volume of postconsumer architectural paint recovered in this state during the preceding calendar year.

(3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state.

(4) The total cost of implementing the architectural paint stewardship program.

(5) An evaluation of how the architectural paint stewardship program's funding mechanism operated.

(6) An independent financial audit funded from the paint stewardship assessment.

(7) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.

(b) The department shall review the annual report required pursuant to this section and within 90 days of receipt shall adopt a finding of compliance or noncompliance with this chapter.

48706. (a) Except as provided in subdivision (c), an action solely to increase the recycling of architectural paint by a producer, stewardship organization, or retailer that affects the types or quantities being recycled, or the cost and structure of any return program, is not a violation of the statutes specified in subdivision (b).

(b) The following statutes are not violated by an action specified in subdivision (a):

(1) The Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(2) The Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(c) Subdivision (a) shall not apply to any agreement establishing or affecting the price of paint, except for the architectural paint stewardship assessment, or the output or production of paint, or any agreement restricting the geographic area or customers to which paint will be sold.

Approved _____, 2010

Governor